IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JAMAR BILLY DESHAWN MENEESE, Petitioner.	)	No. 86203-6 En Banc Filed August 2, 2012

OWENS, J. -- Jamar Meneese appeals his conviction for unlawfully carrying a dangerous weapon on school grounds and for possessing a controlled substance. He claims the weapon, an air pistol, was seized in an unlawful search at school and should have been suppressed at trial. The question on appeal is whether the school search exception to the warrant requirement applies to the search conducted by the school resource officer (SRO). The exception allows school officials to search students without a warrant when the official has reasonable suspicion the search will produce evidence of a violation of law or school policy. *New Jersey v. T.L.O.*, 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985).

The parties dispute whether the SRO was acting as a school official or a law enforcement officer at the time of the search. Here, the SRO is a fully commissioned, uniformed, law enforcement officer employed by the Bellevue Police Department. He arrested and handcuffed Meneese before searching his backpack. Moreover, after arresting Meneese, the focus of the investigation was no longer on informal school discipline, an underlying purpose behind the school search exception. Accordingly, given the overwhelming indicia of police action, the school search exception does not apply, a warrant supported by probable cause was required, and the weapon should be suppressed.

FACTS

Officer Michael Fry's Employment

Officer Fry has been a full-time law enforcement officer with the Bellevue Police Department for over 15 years. Since the late 1990s, he has also served as the SRO at Robinswood High School in Bellevue. In 2008, the police department and the school district signed an agreement formalizing the relationship between Fry and five other officers and the school district. In return, the school district agreed to pay $90,000 per year to the police department. As an SRO, Fry was to "creat[e] and maintain[] a safe, secure, and orderly learning environment for students, teachers, and staff, through prevention and intervention techniques." Clerk's Papers (CP) at 26. He

had no authority to administer school discipline, suspensions, or expulsions. He dressed in a standard-issue police uniform that bore the Bellevue Police Department insignia on it. He also drove a marked police vehicle to and from the school. And on a rare occasion, he would assist a fellow officer with an incident unrelated to the school.

Meneese's Arrest and Subsequent Search

In February 2009, Fry was conducting a routine check of the boys' restroom at Robinswood when he discovered Meneese standing at the sink holding a bag of marijuana in one hand and a medicine vial in the other. Fry confiscated the marijuana and escorted Meneese along with his backpack to the dean of students' office.

At the office, the dean took a passive role as Fry informed her about the situation. No school discipline took place at this time. Instead, Fry placed Meneese under arrest and requested a patrol unit to pick Meneese up for booking at the police station. While waiting on backup, Fry became suspicious that Meneese's backpack might contain additional contraband because it had a padlock on the handles. Fry attempted, and had limited success, to search the backpack without first removing the lock. When asked for the key, Meneese claimed to have left it at home. This made Fry even more suspicious. He then handcuffed and searched Meneese for the key, which Fry found. Upon opening the backpack, Fry discovered a replica Beretta air

pistol (i.e., BB gun). And at this point, Fry read Meneese his *Miranda*[1] rights, and the backup officer arrived shortly thereafter to transport Meneese for booking.

Procedural History

Meneese stipulated to the above facts and was convicted of unlawfully carrying a dangerous weapon at school and of possessing less than 40 grams of marijuana. During the trial, Meneese filed a motion to suppress the air pistol, claiming the search was unlawful. A court commissioner denied the motion to suppress and found Meneese guilty.

Meneese filed a motion to revise the commissioner's ruling, which the superior court denied. He then appealed, contesting the lawfulness of backpack search. The Court of Appeals affirmed, finding that the school search exception applied. *State v. J.M.*, 162 Wn. App. 27, 255 P.3d 828 (2011). Meneese then sought review by this court, which we granted. *State v. Meneese*, 172 Wn.2d 1017, 262 P.3d 64 (2011).

Issue Presented

Does the school search exception apply to Fry's search of Meneese's locked backpack?

Standard of Review

On appeal, we review the superior court's decision on the commissioner's ruling; not the commissioner's ruling itself. *State v. Ramer*, 151 Wn.2d 106, 113, 86

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

P.3d 132 (2004). Meneese does not challenge any factual findings. Instead, he challenges the superior court's conclusions of law and its application of law to the facts. Accordingly, we review these issues de novo. *State v. Dow*, 168 Wn.2d 243, 248-49, 227 P.3d 1278 (2010).

Analysis

Meneese is claiming that the air pistol should be suppressed because Fry lacked the necessary warrant to search his locked backpack. Absent an exception to the warrant requirement, the search was indisputably unlawful. *See State v. Stroud*, 106 Wn.2d 144, 152, 720 P.2d 436 (1986) (postarrest searches of locked containers require a valid search warrant), *overruled on other grounds by State v. Valdez*, 167 Wn.2d 761, 777, 224 P.3d 751 (2009). The question on appeal is whether, at the time of the search, the school search exception applied to Fry's search.

1. School Search Exception

Both our state and federal constitutions protect persons from unreasonable searches and seizures. U.S. Const. amend. IV; Wash. Const. art. I, § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law."). This means a government actor needs a warrant supported by probable cause to conduct a search unless an exception applies. *State v. McKinnon*, 88 Wn.2d 75, 79, 558 P.2d 781 (1977). These exceptions are "'jealously and carefully drawn.'" *Id.*

(quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 455, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971)).

The school search exception to the warrant requirement is well established under both Washington and federal law. *T.L.O.*, 469 U.S. at 341 (exception to Fourth Amendment); *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 308-09, 178 P.3d 995 (2008) (exception to article I, section 7). It allows a school official to search a student's person if, under all the circumstances, the official has reasonable suspicion. *Id*.

The Fourth Amendment exception was first recognized in Washington when a high school principal, acting on his own, searched a student after receiving a tip from the local police. *McKinnon*, 88 Wn.2d at 77-78 (decided under Fourth Amendment grounds). The court reasoned that a lower standard applied to the principal because his primary duty was to maintain order and discipline at school, not discover and prevent crime like a police officer. *Id*. at 81. We have since stated that this reasoning also applies under article I, section 7. *See York*, 163 Wn.2d at 308-09. In contrast with teachers and administrators, it is also well settled that law enforcement officers acting on their own are not entitled to this exception. *See McKinnon*, 88 Wn.2d at 81 (reasoning that the high school principal can utilize a lower standard of proof because he is *not* a law enforcement officer); 5 Wayne R. LaFave, Search and Seizure: A

treatise on the Fourth Amendment § 10.11(b), at 511 (4th ed. 2004).

2. School Search Exception and SROs

Meneese challenges the application of the school search exception to Fry's search of Meneese's backpack and argues Fry was a law enforcement officer when he searched the backpack. We agree and hold that in light of the overwhelming indicia of police action, Fry was a law enforcement officer when he searched Meneese's backpack.

Our holding is guided by the underlying rationale for the school search exception. The underlying rationale is that "teachers and administrators have a substantial interest 'in maintaining discipline in the classroom and on school grounds'" that often requires swift action. *State v. Slattery*, 56 Wn. App. 820, 824, 787 P.2d 932 (1990) (quoting *T.L.O.*, 469 U.S. at 339). This need for swift action renders the warrant requirement particularly "unsuited to the school environment." *T.L.O.*, 469 U.S. at 340. In effect, the extra burden of requiring a warrant for school searches undermines the need for swift discipline to maintain order, the very purpose behind the search. *Id*. at 341; *McKinnon*, 88 Wn.2d at 81. The State maintains that SROs share this same interest in maintaining discipline and this same concern about immediacy. For example, Fry helps ensure a proper "learning environment for students, teachers, and staff." CP at 26. This is not unlike the principal in *McKinnon* whose chief duty included "maintaining order and discipline in the school." 88 Wn.2d at 81.

There is, however, a fundamental difference between the principal in *McKinnon* and Fry. The "principal [was] not a law enforcement officer. His job [did] not concern the discovery and prevention of crime. His . . . primary duty [was] maintaining order and discipline in the school." *Id*. Fry *is* a law enforcement officer. Fry's job *does* concern the discovery and prevention of crime, and he has no authority to discipline students. He is a uniformed police officer who "respond[s] to, and address[es], incidents occurring on school grounds." CP at 26. Moreover, his role as SRO does not exempt him from other police duties as he can still be called upon to answer police matters unrelated to the school.

Further evidence of Fry's role as a law enforcement officer is evident from his search of Meneese's locked backpack. Fry had arrested and handcuffed Meneese before searching the backpack. An ordinary school official could not have arrested a student under these circumstances and, most likely, could not have handcuffed a student either, given the nonviolent nature of this offense. At no point during this

event did Meneese either use or threaten to use physical force.[2] The overt actions of arresting and handcuffing Meneese coupled with all the other indicia of police action illustrate that Fry was a law enforcement officer and not a school official.

The State is concerned that applying the higher probable cause standard will waste school resources and undermine the purpose of the search by preventing the swift discipline needed to maintain order. First, Fry was already spending additional time keeping Meneese in custody, waiting for backup. Second, there was no need here for swift discipline to maintain order as Meneese was already under arrest and about to be removed from campus regardless of the search. Therefore, this argument is a non sequitur.

We recognize that our holding is contrary to several foreign jurisdictions that have treated SROs as school officials. *See, e.g.*, *People v. Dilworth*, 169 Ill. 2d 195, 208, 661 N.E.2d 310, 214 Ill. Dec. 456 (1996) (holding that school liaison officer may

[2] While the dissent is correct that school officials may restrain a student using reasonable force where necessary, a school official may not *arrest* a student under these circumstances. The dissent conflates detention and arrest, ignoring extensive Fourth Amendment jurisprudence to the contrary. *See, e.g.*, Joshua Dressler & Alan C. Michaels, Understanding Criminal Procedure 109, 149 (4th ed. 2006) (noting "that circumstances short of an arrest may constitute a less intrusive seizure, subject to a less stringent level of Fourth Amendment review" (citing *Terry v. Ohio*, 392 U.S. 1, 16-19, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968))). Even Fry acknowledges that ordinary school officials cannot arrest a student for a misdemeanor. Tr., Adjudication Hr'g at 73. Moreover, the dissent's willingness to allow ordinary school officials to handcuff students for nonviolent drug offenses without any discussion is deeply troubling.

search with reasonable suspicion); *People v. William V.*, 111 Cal. App. 4th 1464, 1471-72, 4 Cal. Rptr. 3d 695 (2003) (same); *R.D.S. v. State*, 245 S.W.3d 356, 369 (Tenn. 2008) (applying lower standard when police officer is associated with the school system). *But see Patman v. State*, 244 Ga. App. 833, 834, 537 S.E.2d 118 (2000) (holding that a search by a police officer on special assignment at a school requires probable cause); Jacqueline A. Stefkovich & Judith A. Miller, *Law Enforcement Officers in Public Schools: Student Citizens in Safe Havens?*, 1999 BYU Educ. & L.J. 25, 67-69 (1999) (proposing that police operating in schools should be subject to the more stringent probable cause standard because of their extensive training in the "'niceties of probable cause'" (quoting *T.L.O.*, 469 U.S. at 343)). We do not find those decisions persuasive for two main reasons.

First, the other jurisdictions rely on state-specific precedent that is simply inapplicable here. *See, e.g.*, *Dilworth*, 169 Ill. 2d at 208; *William V.*, 111 Cal. App. 4th at 1470. And to the extent these cases base their holding on the Fourth Amendment, we note that our case law has consistently demonstrated "that article I, section 7 provides greater protection to an individual's right of privacy than . . . the Fourth Amendment." *State v. Parker*, 139 Wn.2d 486, 493, 987 P.2d 73 (1999). This is true even in the context of school searches. *See York*, 163 Wn.2d at 309-10. As such, even if the Fourth Amendment would allow the school search exception in this case, article

I, section 7 would not.[3]

Second, these cases are factually distinguishable because they all involved a search prearrest.[4] *See, e.g.*, *Dilworth*, 169 Ill. 2d at 207-08; *William V.*, 111 Cal. App. 4th at 1467-68; *R.D.S.*, 245 S.W.3d at 364. Those courts essentially held that the school search exception should apply to SROs when they "search[] a student during school hours on school grounds, in furtherance of the school's education-related goals." *In re Josue T.*, 128 N.M. 56, 61, 989 P.2d 431 (Ct. App. 1999). Even under those courts' reasoning, Fry's search did not further any education-related goals as he had already arrested and handcuffed Meneese. *Cf. Pacheco v. Hopmeier*, 770 F. Supp. 2d 1174, 1183 (D.N.M. 2011) (refusing to apply the school search exception when the initial reason for the search is other than maintaining school security). There was no chance for swift and informal school discipline and further searching primarily

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[3] Contrary to the dissent's assertion, we do not trample on *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), in stating that article I, section 7 would prohibit such a search. As recognized in *State v. White*, 135 Wn.2d 761, 769, 958 P.2d 982 (1998),

> we have an analytical advantage because we know article I, section 7 provides more protection to individuals from searches and seizures than the Fourth Amendment. Our inquiry is no longer whether article I, section 7 provides greater protection but, rather, does the scope of the protection apply to the facts of this case.

Because our previous cases, *York*, and through it *McKinnon*, direct the analysis to be applied, the *Gunwall* analysis is no longer required. *Id.*; *see State v. Eisfeldt*, 163 Wn.2d 628, 637, 185 P.3d 580 (2008).

[4] Although we draw a factual distinction between the cases based on the timing of the arrest, this is not to say we would necessarily uphold the search if Fry had searched Meneese prearrest. The factual distinction is merely another reason these cases are not persuasive.

promoted criminal prosecution, not education. Accordingly, we do not find the contrary foreign authority persuasive here.[5]

Conclusion

In sum, we hold that in light of the overwhelming indicia of police action, the school search exception does not apply to Fry's search of Meneese's locked backpack. Fry is a fully commissioned law enforcement officer employed by the Bellevue Police Department who has no ability to discipline students. At the time of the search, Fry was seeking to obtain evidence for criminal prosecution, not evidence for informal school discipline. Further, the search was not to maintain order because Meneese was being removed from school regardless of the search. Therefore, the underlying purpose of the school search exception is not served. Without the application of the exception, Fry required a warrant supported by probable cause to search Meneese's locked backpack. Because Fry lacked the necessary warrant, the search was unlawful and the weapon should be suppressed. We therefore reverse the Court of Appeals and remand for further proceedings consistent with this opinion.

[5] Having concluded that the school search exception does not apply, we decline to address the reasonableness of the search under that standard.

AUTHOR:

Justice Susan Owens

WE CONCUR:

Chief Justice Barbara A. Madsen

Justice Charles W. Johnson

Justice Tom Chambers

Justice Charles K. Wiggins

Justice Steven C. González

Justice Mary E. Fairhurst